

1 THEODORE J. BOUTROUS JR., SBN 132099
2 tboutrous@gibsondunn.com
3 CATHERINE A. CONWAY, SBN 98366
4 cconway@gibsondunn.com
5 JESSE A. CRIPPS, SBN 222285
6 jcripps@gibsondunn.com
7 GIBSON, DUNN & CRUTCHER LLP
8 333 South Grand Avenue
9 Los Angeles, CA 90071-3197
10 Telephone: 213.229.7000
Facsimile: 213.229.7520

7 SARAH ZENEWICZ, SBN 258068
szenewicz@gibsondunn.com
8 GIBSON, DUNN & CRUTCHER LLP
555 Mission Street, Suite 3000
9 San Francisco, CA 94105
Telephone: 415.393.8200
10 Facsimile: 415.393-8306

11 Attorneys for Defendants
12 BLOOMIN' BRANDS, INC.; OSI RESTAURANT
13 PARTNERS, LLC; OS RESTAURANT SERVICES,
14 LLC

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 HOLLY GEHL, CHRIS ARMENTA, TRENT
18 BROADSTREET, BRITTCNI ZACHER,
ALEX BURROUGHS, SARA EWART,
JAMIE METTER, RAMON PEREZ,
SHANNON SPALDING, and RYAN TYSON
19 Individually and On Behalf of All Others
Similarly Situated,

20 Plaintiffs,

21 v.

22 BLOOMIN' BRANDS, INC.; OSI
23 RESTAURANT PARTNERS, LLC; OS
24 RESTAURANT SERVICES, LLC; T-BIRD
25 RESTAURANT GROUP, INC.; T-BIRD
NEVADA, LLC; and DOES 1 through 100,
Inclusive,

26 Defendants.

27 CASE NO. 4:13-cv-05961-KAW

28 **JOINT STIPULATION AND [PROPOSED]
ORDER VOLUNTARILY DISMISSING
PLAINTIFFS GEHL, ARMENTA,
BROADSTREET, ZACHER, BURROUGHS,
EWART, METTER, PEREZ AND TYSON'S
CLAIMS AGAINST DEFENDANTS
BLOOMIN' BRANDS, INC.; OSI
RESTAURANT PARTNERS, LLC; AND OS
RESTAURANT SERVICES, LLC WITH
PREJUDICE**

Judge: The Honorable Kandis A. Westmore

1 TO THE COURT AND THE CLERK OF COURT, PLEASE TAKE NOTICE THAT
 2 plaintiffs Holly Gehl, Chris Armenta, Trent Broadstreet, Brittni Zacher, Alex Burroughs, Sara Ewart,
 3 Jamie Metter, Ramon Perez and Ryan Tyson (“Plaintiffs”)¹ and Bloomin’ Brands, Inc.; OSI
 4 Restaurant Partners, LLC; and OS Restaurant Services, LLC (the “Bloomin’ Defendants”) hereby
 5 stipulate that, in exchange for a release by the Bloomin’ Defendants to any claims for costs, expenses
 6 and attorneys’ fees in connection with this action, each Plaintiff through this stipulation and
 7 agreement hereby agrees:

8 (1) to dismiss each and every one of such Plaintiff’s claims against the Bloomin’
 9 Defendants in the above-captioned lawsuit in their entirety with prejudice pursuant to
 10 Federal Rule of Civil Procedure 41(a)(1)(A)(ii),² pursuant to which Plaintiffs agree
 11 and understand that they are forever waiving, releasing and discharging any claims
 12 that were brought or could have been brought in this action and will not reassert such
 13 claims;

14 (2) to not bring any claims against the Bloomin’ Defendants, or any of their subsidiaries
 15 or parent companies, that were brought or could have been brought relating to
 16 minimum wage, unpaid overtime, or off-the-clock gap time claims in this or any other
 17 jurisdiction, including in the action currently pending in the United States District
 18 Court, District of Nevada, case number 2:13-cv-01820-JAD-(NJK), entitled *Cardoza,*
 19 *et al. v. Bloomin’ Brands, Inc., et al.*, pursuant to which Plaintiffs agree and
 20 understand that they are forever waiving, releasing and discharging any claims that

21 _____
 22 ¹ Each of the Plaintiffs other than Shannon Spaulding have agreed to this Stipulation and
 23 [Proposed] Order. Ms. Spaulding has ceased to communicate with her counsel. Plaintiffs’
 24 counsel intends to file a motion to withdraw as her counsel and withdraw Ms. Spaulding as a
 25 named Plaintiff in this action. Defendants have agreed not to oppose that motion.

26 ² In the instant case where no class is certified, voluntary dismissal by joint stipulation of the
 27 parties is proper. Fed. R. Civ. P. 41(a)(1)(A). No court approval is required: “Rule 23(e)(1)(A)
 28 resolves the ambiguity in former Rule 23(e)’s reference to dismissal or compromise of ‘a class
 29 action.’ That language could be—and at times was—read to require court approval of settlements
 30 with putative class representatives that resolved only individual claims. *See Manual for Complex*
 31 *Litigation Third*, § 30.41. The new rule requires approval only if the claims, issues, or defenses
 32 of a *certified class* are resolved by a settlement, voluntary dismissal, or compromise.” Fed. R.
 33 Civ. P. 23(e)(1)(A) advisory committee’s note (emphasis added).

were brought or could have been brought in that action;

- (3) that he or she will not apply for employment with or accept employment in any capacity at any restaurant location owned or operated by the Bloomin' Defendants (or any subsidiary thereof);
- (4) that each Plaintiff knowingly and voluntarily releases the Bloomin' Defendants from any and all claims, demands, causes of action, complaints or charges, known or unknown, of any kind or character, in tort, in contract, or under any law or statute whatsoever, which each Plaintiff has or might have, and that each Plaintiff waives the provisions of Section 1542 of the California Civil Code (or any analogous state or federal statute), which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR; and

(5) the Bloomin' Defendants agree not to assert any claims against Plaintiffs related to or arising from Plaintiffs' prosecution of this action.

In consideration for the foregoing, Plaintiffs and the Bloomin' Defendants agree that they will each bear their own respective costs, expenses and attorneys' fees in connection with this action.

Dated: September 22, 2014

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Jesse A. Cripps
Jesse A. Cripps
Attorneys for Defendants Bloomin' Brands, Inc.; OSI
Restaurant Partners, LLC; OS Restaurant Services, LLC

1 Dated: September 22, 2014

2
3 WOLF, RIFKIN, SHAPIRO, SCHULMAN &
4 RABKIN, LLP

5 By: /s/ Eric Levinrad
6 Eric Levinrad
7 Attorneys for Plaintiffs

8 Dated: September 22, 2014

9 LATHROP & GAGE LLP

10 By: /s/ Beth Schroeder
11 Beth Schroeder
12 Attorneys for Defendants T-Bird Restaurant Group, Inc.
13 and T-Bird Nevada, LLC

14 **[PROPOSED] ORDER**

15 **IT IS SO ORDERED.**

16 Dated: _____

17 _____
18 KANDIS A. WESTMORE
19 United States Magistrate Judge
20
21
22
23
24
25
26
27
28

1 **DECLARATION OF FILER PURSUANT TO CIVIL LOCAL RULE 5-1(i)**

2 I attest that concurrence in the filing of this stipulation has been obtained from each of the
3 other Signatories to this filing, as that term is defined in Civil Local Rule 5-1(i).

4

5 Dated: September 22, 2014

6

7 GIBSON, DUNN & CRUTCHER LLP

8 By: /s/ Jesse A. Cripps

9 Jesse A. Cripps
10 Attorneys for Bloomin' Brands, Inc.; OSI
11 Restaurant Partners, LLC; OS Restaurant Services,
12 LLC